

***REMARKS/ARGUMENTS***

Examiner lists claims 1, 4-16, 25, 26, 28 and 33-43 as pending in this application. Claims 1, 4, 5, 12, 33, 34, and 38 have been amended herein. Claims 2, 3, 17-24, 27 and 29-32 have previously been cancelled. Claims 25, 26, 28, 35-37, 39-43 have been withdrawn. Claims 1, 4-16 and 34 stand rejected. Claim 38 is allowed. The issues raised in the Office Action of August 23, 2010 ("Current Action") are as follows:

- \*      Claims 1-2, 4-17 and 19-30 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement;
- \*      Claims 1-2 and 4-16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter;
- \*      Claims 1-2, 4-16 and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable.

In response, Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the remarks presented herein.

The Examiner has reintroduced claims which were either cancelled or withdrawn, namely, claims 2, 17 and 19-30. Applicant submits that these claims are not under prosecution as they are either cancelled or withdrawn and rejection to those claims will not be readdressed in this response. Claim 33 which was withdrawn in error has been similarly reintroduced and objections thereto are addressed in this response.

No new matter was added. All of the new claims are supported by claim 38 and the specification including the examples in the specification.

Applicant has addressed all of the rejections in the Office Action and believes the claims are now in condition for allowance.

***REJECTIONS UNDER 35 U.S.C. § 112***

*Claims 1-2, 4-17 and 19-30 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 1-2 and 4-16 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter.*

Applicant respectfully requests that the Examiner withdraw the rejection of claims 1 and 4-16 under 35 U.S.C. § 112, first and second paragraphs. Applicant submits that independent claim 1 as amended fully complies with 35 U.S.C. § 112, first and second paragraphs. Applicant, accordingly, requests that the Examiner withdraw the rejection of claims 1 and 4-16 under 35 U.S.C. § 112, first and second paragraphs.

In addition, the subject matter purportedly not described in the specification is captured in withdrawn claims rendering the written description requirement rejection under 35 U.S.C. § 112, first paragraph moot. Applicant, accordingly, requests that the Examiner withdraw the rejection of claims 1 and 4-16 under 35 U.S.C. § 112, first paragraph. Applicant, therefore, respectfully requests the withdrawal of the 35 U.S.C. § 112 rejections and allowance of claims 1 and 4-16.

***REJECTIONS UNDER 35 U.S.C. § 103***

*Claims 1-2, 4-16 and 33 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,228,506 to Hosatte et al. (hereinafter Hosatte) in view of U.S. Patent No. 6,585,989 to Herbst et al. (hereinafter Herbst).*

Applicant respectfully requests that the Examiner withdraw the rejection of Claims 1, 4-16 and 33 under 35 U.S.C. § 103(a). Claim 33 was withdrawn in error and is now addressed in the context of Examiner's 35 U.S.C. § 103(a) rejection. Support for the limitations of claim 33 is found in the present application. Specifically, support for "a

fibrous material" can be found in the present specification at paragraphs [0012] (summary of invention), [0020], [0021], [0049] and [0050] (detailed description); support for "a water insoluble thermoplastic compound with a molecular weight of at least 2500 g/mole that impregnates the fibrous material" can be found in the specification at paragraph 0022 (detailed description); support for the solubility parameters and polyvinyl chloride/polymethacrylate 40/60 weight percent breakdown can be found in the specification at paragraphs 0027 and 0028 (tables 2 and 3), respectively. Claim 33 is supported in the specification and is not taught in the prior art. Applicant, therefore, respectfully requests that the Examiner withdraw the rejection of claim 33 under 35 U.S.C. § 103.

The references, Hosatte and Herbst, cited by the Examiner fail to teach each and every limitation of the present invention. In particular, Hosatte does not disclose the same materials and therefore there is no presumption that the materials of Hosatte would meet the claimed limitations of the present invention. The addition of Herbst fails to cure the deficiency.

Specifically the combination fails to teach a specific composition of 70 weight percent Polyamideimide and 30 weight percent Polystyrene and as a result of not teaching the specific composition the combination fails to teach the specific insoluble thermoplastic compound with a molecular weight of at least 2500 g/mole that impregnates the fibrous material and fails to teach the specific water insoluble thermoplastic compound has a nonpolar solubility parameter  $\delta_n$ , a polar solubility parameter  $\delta_p$ , and a hydrogen bond solubility parameter  $\delta_h$ .

Specifically, the combination fails to teach claim 1: "A water/air contact medium for use in an evaporative cooler, comprising: a corrugated fibrous sheet material comprising at least a top layer and a bottom layer in contact at one or more regions to form at least two channels between the top layer and the bottom layer for air and fluid flow; and a water insoluble thermoplastic compound that impregnates the corrugated fibrous sheet material . . . wherein the water insoluble thermoplastic compound also has a

surface tension between about 20 and 70 dynes/cm and an interfacial tension with in-service water between zero and about 30 dynes/cm.”

Hosatte and Herbst combined also fail to teach claim 33: “A water/air contact medium for use in an evaporative cooler, comprising a fibrous material; and a water insoluble thermoplastic compound with a molecular weight of at least 2500 g/mole that impregnates the fibrous material, wherein the water insoluble thermoplastic compound consisting essentially of 40 weight percent polyvinyl chloride and 60 weight percent polymethacrylate to inhibit deposition of one or more dissolved or particulate contaminants wherein the water insoluble thermoplastic compound has a nonpolar solubility parameter  $\delta_n$  of about 7.47 g-cal/mole, a polar solubility parameter  $\delta_p$  of about 5.21 g-cal/mole, and a hydrogen bond solubility parameter  $\delta_h$  of about 3.11 g-cal/mole.”

To render a claim unpatentable under 35 U.S.C. § 103, all the claim limitations must be taught in the prior art, M.P.E.P. § 2143.03. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness, M.P.E.P. § 2142; *In re Peehs*, 204 U.S.P.Q. 835, 837 (CCPA 1980). The applied art does not meet all the claim limitations and once an independent claim is found to be non-obvious under 35 U.S.C. § 103, then any claim which depends from that independent claim is also non-obvious, MPEP § 2143.03; *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Thus, a *prima facie* case of obviousness has not been established with respect to the present claims and Hosatte cannot be used in combination with Herbst to substantiate a 35 U.S.C. § 103 rejection. Applicant, therefore, respectfully requests that the Examiner withdraw the rejection of claims 1, 4-16 and 33 under 35 U.S.C. § 103(a).

## CONCLUSION

In light of the remarks and arguments presented above, Applicant respectfully submits that the claims in the Application are in condition for allowance. Claim 38 has been allowed. Please enter the erroneously withdrawn claim 33 which does not introduce new matter and is supported by the specification as filed. Favorable consideration and allowance of pending claims 1, 4-16, 33, 34 and 38 are therefore respectfully requested.

In view of the above, Applicant believes the Application is in condition for allowance. Applicant believes this paper is being filed with all required fees. However, if any additional fee is due, including those for an extension of time please charge any fees required or credit any overpayment to Chalker Flores, LLP's Deposit Account No. 50-4863 during the pendency of this Application pursuant to 37 CFR 1.16 through 1.21 inclusive, and any other section in Title 37 of the Code of Federal Regulations that may regulate fees. If an extension of time is required with this response but is not included, Applicant hereby petitions for a Request for Extension of Time under 37 CFR 1.136(a).

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

Dated: January 24, 2011

Respectfully submitted,  
CHALKER FLORES, LLP



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